(5)

No. 03-1234

In The
Supreme Court of the United States

MID-CON FREIGHT SYSTEMS, INC.
AND LAFOND EXPRESS, INC., on behalf
of themselves and all others similarly situated,

Petitioners,

v.

MICHIGAN PUBLIC SERVICE COMMISSION,
MICHIGAN DEPARTMENT OF TREASURY,
MICHIGAN DEPARTMENT OF COMMERCE,
AND THE STATE OF MICHIGAN,

Respondents.

On Petition For A Writ Of Certiorari
To The Michigan Court Of Appeals

PETITIONERS' SUPPLEMENTAL BRIEF

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PETITIONERS' SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.8, Petitioners submit this supplemental brief in response to the Brief for the United States as *amicus curiae*. Although the United States fully supports a grant of certiorari to review the $100 Interstate Decal Fee under the Single State Registration System ("SSRS"), it suggests that the Court "might wish to reformulate the question presented" by declining to address the federal "bingo card" program replaced by the SSRS's implementation. (*U.S. Brief* at 11). At the same time, however, the United States acknowledges that the bingo card program was no less preemptive in scope and rendered the Interstate Decal Fee unlawful long before the SSRS changed the procedures by which States register interstate carrier operations:

> [T]he interstate fee was preempted by the bingo card system because it was precisely the type of fee regulated by that system, and it exceeded the lawful amount.

(*U.S. Brief* at 11 n.6).

Respectfully, Petitioners submit that a grant of certiorari should test the $100 Interstate Decal Fee under both the SSRS and the predecessor bingo card program. The Michigan Court of Appeals' faulty preemption analysis permeates its entire decision and indiscriminately disregards the command of Congress in both pre- and post-SSRS laws.[1] As such, the court's fundamental misreading

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[1] *Compare* 49 U.S.C. § 11506(b) (1988 ed.) (repealed) ("[w]hen a State registration requirement imposes obligations in excess of the [Interstate Commerce Commission's bingo card] standards, the part in excess is an unreasonable burden [on interstate transportation]") *with* 49 U.S.C. § 14504(b) (2000 ed.) ("[w]hen a State registration requirement imposes

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of the canons of federal preemption is sufficiently important to warrant review. *Chicago & North Western Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1981) (correcting lower court's erroneous application of the federal preemption doctrine).

In addition, the Michigan court's mistaken preemption analysis left unaddressed the refund claims of hundreds of class members under Mich. Comp. Laws Ann. § 600.6452(1) (West 2002), which applies a three-year statute of limitations to the January 3, 1995 filing of Petitioners' complaint. Accordingly, the validity of the Interstate Decal Fee under the bingo card program before implementation of the SSRS is fiscally important to both the certified class of feepayers in this case and the State of Michigan. Support for the grant of certiorari under such circumstances can be found in *Territory of Alaska v. American Can Co.*, 358 U.S. 224, 225 (1959), in which certiorari was granted to assess the impact of a repealed tax statute "in view of the fiscal importance of the question to Alaska." *See also Bigelow v. Virginia*, 421 U.S. 809, 813-814 (1975) (certiorari granted despite intervening amendment changing application and scope of statute under review); *Patterson v. Lamb*, 329 U.S. 539, 541 (1947) (lower court decision affecting status and claims of thousands of draftees called for Court's review).

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obligations in excess of the [SSRS] standards of the Secretary, the part in excess is an unreasonable burden [on interstate transportation]"). Indeed, the nearly identical wording of the two statutory schemes would warrant a summary reversal on the lawfulness of the Interstate Decal Fee under the bingo card program upon a finding that the fee violates the SSRS.

Finally, because this Court has the plenary power "to do justice as the case requires," *Tender v. U.S.*, 345 U.S. 565, 570 (1953), Petitioners ask the Court to add *all* of this case to the list of others in which it has rectified plain and obvious misapplications of important federal principles affecting the rights of citizens and States alike. *E.g., Florida v. Rodriguez*, 469 U.S. 1, 5 (1984) (per curiam) (lower court order reflected a "misapprehension" of controlling Fourth Amendment principles); *Florida v. Meyers*, 466 U.S. 380, 382 (1984) (court below "either misunderstood or ignored" prior Fourth Amendment rulings); *Illinois v. Batchelder*, 463 U.S. 1112, 1116 (1983) (per curiam) (lower court "inexplicably" failed to apply dispositive Due Process Clause case law); *Florida Dep't of Health & Rehabilitative Services v. Florida Nursing Home Ass'n*, 450 U.S. 147, 147 (1981) (per curiam) (court below "misapplied" the prevailing Eleventh Amendment standard). *Cf.* Supreme Court Justice William H. Rehnquist, *Oral Advocacy: A Disappearing Art*, 35 Mercer L. Rev. 1015, 1027 (1984) ("the most common reason members of our Court vote to grant certiorari is that they doubt the correctness of the decision of the lower court"). Michigan's $100 Interstate Decal Fee was just as forbidden by the bingo card program as it is by the SSRS, and the Michigan court's preemption analysis is just as misguided on the one subject as it is on the other. Complete review of the question presented, therefore, is warranted.

The Petition for Writ of Certiorari should be granted in its entirety.

Respectfully submitted,

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